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EXAMINER

LU, SHIRLEY

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/043,378
Filing Date: October 26, 2001
Appellant(s): SOUNDARARAJAN, ARAVIND

Soundararajan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/2/07 appealing from the Office action
mailed 2/2/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6721953

Bates

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim(s) 1-8, 10-11 is/are rejected under 35 U.S.C. 102(e) as being anticipated by Bates (6721953).

As to claim 1,

a selector for selecting the programming input to process for display (fig. 1, element 14; fig. 2);

a timer for timing the amount of time each channel is selected for display; a database for recording channel-selection durations (period of time, program tables [7, 61] to [8, 33]; fig. 8);

a processor in communication with the database for periodically compiling a program selection control list, wherein the program selection control list includes channels selected and assigned weight values relative to other listed channels, said weighted values calculated according to a pre-determined algorithm from the channel-selection durations stored on the database (fig. 2, element 24; figs. 3, 8; predetermined threshold, program table [7, 61] to [8, 33]).

As to claim 2,

a higher weight value is assigned to channels having greater timed viewing durations and wherein the channels listed on the program selection control list are listed

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beginning with the channel having the highest relative weight value ([10, 1-16]; [13, 14-37]).

As to claim 3,

further comprising a viewer preference profile (fig. 8; period of time, program tables [7, 61] to [8, 33]).

As to claim 4,

the viewer preference profile comprises automatically generated viewer-preference information (routine 122 [7, 61] to [8, 33]; fig. 8).

As to claim 5,

the processor generates an adjusted program selection control list by applying information stored on the viewer preference profile to the program selection control list (durations, period of time, program tables [7, 61] to [8, 33]; fig. 8).

As to claim 6,

the system is capable of generating and storing a plurality of program selection control lists (fig. 8; period of time, program tables, table 50 may be kept at a fixed size, with programs having the lowest counts deleted [7, 61] to [8, 33]).

As to claim 7,

the processor determines which of the program selection control lists to apply to the channel selection process (different kinds of lists such as fixed, different thresholds, or other criteria may be used to determine relative frequencies [7, 61] to [8, 33]; fig. 8).

As to claim 8,

further comprising a clock for determining the day and time, and wherein the processor uses clock data as a factor in determining which program selection control list to use (day and time [6, 4-15]).

As to claim 10,

the selector uses the program selection control list to determine which programming input to select for display (period of time, program tables [7, 61] to [8, 33]; fig. 8).

As to claim 11,

the selector successively uses a plurality of program selection control lists to determine which programming input to select for display (fig. 8; period of time, program tables, table 50 may be kept at a fixed size, with programs having the lowest counts deleted; different kinds of lists such as fixed, different thresholds, or other criteria may be used to determine relative frequencies [7, 61] to [8, 33]).

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim(s) 9, 12-19 is/are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bates (6721953).

As to claim 9,

Bates discloses that a viewer's actions affect the items on the list, and that different kinds of lists such as fixed, different thresholds, or other criteria may be used to determine relative frequencies ([7, 61] to [8, 33]; fig. 8).

Bates does not specifically wherein the system is configurable for individual use by more than one viewer, and wherein the processor uses a viewer identity as a factor in determining which program selection control list to use. Examiner gives Official Notice that it is notoriously well known in the art to configure a system for individual use by more than one viewer, wherein viewer identify is a factor in determining which list to use. Accordingly, it would have been obvious to one of ordinary skill in the art to modify Bates in order to customize an experience suitable to a viewer based on the viewer's behavior and preferences. These concepts are well known in the art and do not constitute a patentably distinct limitation, per se [M.P.E.P. 2144.03].

As to claim 12,

maintaining a viewing-history record of the amount of time each displayed program channel is displayed by the television system (see claim 1);

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ranking each displayed channel relative to the other displayed channels according to the display time in the viewing-history record (see claim 2);

creating a program selection control list for one of a plurality of viewers based on the displayed channel ranking (see claim 1; It has been held that duplicating parts is obvious *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In this case, it would have been obvious to duplicate the user and/or system in Bates. The motivation would have been to share the system with other users).

As to claim 13,

the viewing-history record also includes information relating to the time of day during which the displayed program was displayed (see claim 8).

As to claim 14,

the viewing-history record also includes information relating to the day of the week during which the displayed program was displayed (see claim 8).

As to claim 15,

the step of creating a program selection control list comprises creating a plurality of program selection control lists (see claim 6).

As to claim 16,

further comprising the step of determining, upon receiving a control list invoke signal, the appropriate program selection control list to use (see claim 7).

As to claim 17,

further comprising the step of updating the program selection control list (thresholds are updated [7, 61] to [8, 33]; fig. 8).

As to claim 18,

further comprising the step of creating a preference profile based on viewer input, the profile containing an update mode selection, and wherein the program selection control list is updated according to the selected update mode (threshold may be set, the list is effectively created based on viewer input [7, 61] to [8, 33]; [13, 23-37]; fig. 8).

As to claim 19,

Pausing the maintenance of the viewing-history record (when the system is off, the maintenance is effectively 'paused'; fig. 5, [6, 66] to [7, 60]).

(10) Response to Argument

A. Rejection under 35 U.S.C. 102(e) by US 6721953 to Bates et al.

i. Claims 1, 4-8, 10, and 11

Claim 1

a. Appellant argues on page 5, that Bates does not disclose "a timer for timing the amount of time each channel is selected for display and a database for recording channel-selection durations."

- More specifically, appellant argues that Bates does not disclose “the duration of time that the program was viewed by the viewer.”

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “the duration of time that the program was viewed by the viewer”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, the amount of *time selected for display* does not equate the *time viewed by the viewer*. For example, a viewer could choose to display a program for an hour, but the time actually viewed may be much less. The viewer may sleep through half the program, or choose to take frequent bathroom breaks; all the while the program is being *displayed*. Therefore, the time selected for display and time *actually* viewed by the viewer is not synonymous with one another. Again, please note that the claimed limitation recites “the amount of time each channel is selected for display,” and **not** “the duration of time that the program was viewed by the viewer.”

Nevertheless, as cited in the office action, Bates discloses in [column 7, line 61-column 8, line 33]: using criteria such as “accumulated viewing time to be used to determine relative frequencies of access for different programs.” Furthermore, Bates discloses that “block 108 starts a timer that is utilized to determine the duration during which the now current channel is viewed by a viewer” [column 7, lines 1-12].

The examiner's interpretation of the reference meets the claimed subject matter.

The examiner recognizes that the claim is given its broadest reasonable interpretation. As to the actual claimed limitation, Bates indeed discloses: a timer for timing the amount of time each channel is selected for display; a database for recording channel-selection durations (period of time, program tables [column 7, line 61- column 8, line 33]; fig. 8);

b. Appellant argues on page 6, that Bates does not disclose, “recording the time duration measured by the timer in a database.”

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “recording **the** time duration measured by the timer in a database”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, please note that the claim language recites “a database for recording channel-selection durations,” and **not, per se**, “a database for recording **the** channel-selection durations.”

Nevertheless, as cited in the office action, Bates discloses in [column 7, line 61- column 8, line 33]: using criteria such as “accumulated viewing time to be used to determine relative frequencies of access for different programs,” and that ‘information which signifies that a program has been viewed an additional time in excess of the predetermined threshold is recorded’ [column8, lines 19-33]. Furthermore, Bates

discloses that “block 108 starts a timer that is utilized to determine the duration during which the now current channel is viewed by a viewer” [column 7, lines 1-12].

The examiner recognizes that the claim is given its broadest reasonable interpretation.

For the above reasons, the examiner’s interpretation of the reference meets the claimed subject matter.

For the above reasons, the reference teaches the claimed limitation.

c. Appellant argues on page 7, that Bates does not disclose “assigning channel weight values.”

The examiner respectfully disagrees.

Please note that the actual claimed limitation is “the program selection control list includes channels selected and assigned weight values relative to other listed channels.” Nevertheless, Bates discloses, “assigning channel weight values” in (figs. 3, 8; [column 7, line 61- column 8, line 33]): “it is determined whether, either due to a channel change or the powering off of the set top box, the channel being viewed prior to the event was viewed for a sufficient period of time.” In this process, the channels are ranked and weighted, and in the process of ‘assigning channel weight values,’ channel-viewing time is a criterion for consideration. In figure 3, element 54 shows that the channel is effectively ranked by watched count 60. Furthermore, Bates discloses that, “monitoring of user viewing habits may also be based on a channel-by-channel basis” [column 13, lines 34-36].

For the above reasons, the reference teaches the claimed limitation.

d. Appellant argues on page 7, that Bates does not disclose “a selector for selecting the programming input to process for display.”

The examiner respectfully disagrees.

Clearly, figures 1 and 2 disclose the television system consistent with the invention. As discussed above, the invention is based upon viewer *selected* programming. Figure 2, element 40 is a user input interface to receive input via front panel button and/or a remote control. Remote controls are notoriously well known to *select* the programming input to process for display.

For the above reasons, the reference teaches the claimed limitation.

For the above reasons, the rejection of claim 1 should be sustained.

ii. Claim 2

Claim 2

e. Appellant argues on page 7, that Bates does not disclose “a higher weight value is assigned to channels having greater timed viewing durations and that the channels listed on the program selection control list are listed beginning with the channel having the highest relative weight value.”

The examiner respectfully disagrees.

Bates indeed discloses, “a higher weight value is assigned to channels having greater timed viewing durations,” as discussed above, and duplicated below for convenience: Bates discloses, “assigning channel weight values” in (figs. 3, 8; [column

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7, line 61- column 8, line 33]): "it is determined whether, either due to a channel change or the powering off of the set top box, the channel being viewed prior to the event was viewed for a sufficient period of time." In this process, the channels are ranked and weighted, and in the process of 'assigning channel weight values,' channel-viewing time is a criterion for consideration. In figure 3, element 54 shows that the channel is effectively ranked by watched count 60. Furthermore, Bates discloses that, "monitoring of user viewing habits may also be based on a channel-by-channel basis" [column 13, lines 34-36].

Furthermore, Bates discloses, "the channels listed on the program selection control list are listed beginning with the channel having the highest relative weight value" [column 10, lines 1-15]: the data is sorted by relative frequency of access. Please note fig. 3: within a particular timeslot, for example from 8:00-8:30, channel 005 is ranked above channel 006 because channel 005 was viewed more, and ranked correspondingly so. Therefore, the channel having the highest relative weight value, in this channel 005, is listed ahead of channel 006.

For the above reasons, the reference teaches the claimed limitation.

For the above reasons, the rejection of claim 2 should be sustained.

iii. Claim 3

Claim 3

f. Appellant argues on page 8 that Bates does not disclose "the system further includes a viewer preference profile."

The examiner respectfully disagrees.

A viewer preference profile is essentially a profile that signifies a viewer's preferences. The channel selection durations, viewing times, and favorite programs of a viewer represent a viewer's preferences. This data is stored and organized as a profile of viewer preference. Indeed, Bates discloses: a viewer preference profile (fig. 8; period of time, program tables [column 7, line 61- column 8, line 33].

For the above reasons, the reference teaches the claimed limitation.

For the above reasons, the rejection of claim 3 should be sustained.

B. Rejection under 35 U.S.C. 103(a) in view of Bates et al. (US 6721953).

i. Claim 9

Claim 9

g. Appellant argues on page 9, that Bates and official notice does not disclose "the system is configurable for individual use by more than one viewer and that the processor uses a viewer identity as a factor in determining which program selection control list to use."

- More specifically, appellant argues that "Bates does not provide the requisite motivation and alone is not sufficient to render the claims prima facie obvious.

In response, the appellant should note that claim 11 was rejected under official notice. Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the

claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation can be found in either or both Bates, and the motivation is provided in the official notice of the office action.

For the above reasons, the reference teaches the claimed limitation.

For the above reasons, the rejection of claim 9 should be sustained.

ii. Claims 12-19

Claim 12

h. Appellant argues on page 9, that Bates does not disclose "maintaining a history of the amount of time each displayed channel is displayed or a creating a program selection control list for one of a plurality viewers."

The examiner respectfully disagrees.

Bates discloses "maintaining a history of the amount of time each displayed channel is displayed." In other words, for each channel displayed, the time displayed is recorded. Bates discloses that "block 108 starts a timer that is utilized to determine the duration during which the now current channel is viewed by a viewer" [column 7, lines 1-12]. Therefore, the duration of the channel being viewed, and effectively displayed, is recorded, which comprise a history of channel display time. In addition, fig. 3 discloses a table that stores the amount of time that a channel is displayed, wherein the amount of time is measured in time units called "watched count."

- Furthermore, Appellant argues that, "Bates does not account for different users."

As recited in the office action, the rejection meets the claim limitation: creating a program selection control list for one of a plurality of viewers based on the displayed channel ranking (see claim 1; It has been held that duplicating parts is obvious In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). In this case, it would have been obvious to duplicate the user and/or system in Bates. The motivation would have been to share the system with other users).

In other words, in view of the rejection of claim 12 in the office action, the claim requires *one of a plurality* of viewers. Since multiple viewers have multiple separate monitoring systems, each in their own homes, the program selection control list is indeed for one of a plurality of viewers. For example, viewer A has a monitoring system in his home, and he constitutes a first viewer. Meanwhile, viewer B has another separate monitoring system in his home, on the opposite side of the country. Viewer A and viewer B each has a separate and different program selection control lists.

For the above reasons, the reference teaches the claimed limitation.

For the above reasons, the rejection of claim 12 should be sustained.

(11) Related Proceeding(s) Appendix

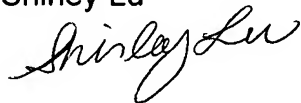
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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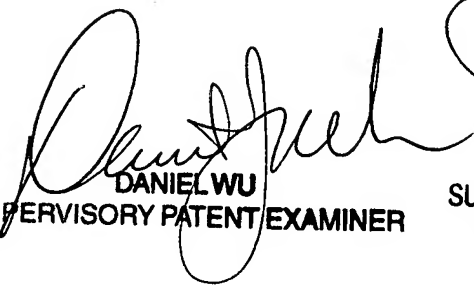
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

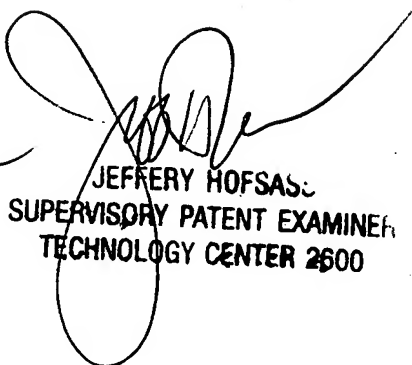
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